

Editorial

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Divide, divert and rule will not work

Essence of belongingness will help building India a strong nation

First year of BJP led government in the state gave a signed of relief but the second part shattered some of the expectation.

The past few months, people in the state have been living with fear of uncertain future. The prolonged shut down of academic activities of higher studies, apprehension of the potential threats to the integrity of the state due to the undisclosed content of Framework agreement, alleged intrusion of Manipur's territory by Myanmar government issues of ILPS etc , have once more created the fear factor of an uncertain future once again.

The recent sequence of events witness is indeed a worrisome for all people.

May be there are differences in analyzing the root of today's happening. But Imphal Times sees every cause as a result of the identity crisis.

The idea of nation having one identity, one religion, one culture, one language promulgated by some self style son of mother India has created fear psychosis to various ethnic communities in the country. At a time when chauvinistic idealism of creating a nation of only one community is seen marching ahead, it is natural that each and every ethnic communities of the nation have reason to be feared. Because it is family first then come the society then it is the nation.

India was and is a nation of diverse people. The beauty of India is the existences of different ethnic people with diverse cultural people. It is important that if India has to prove the world as the most successful democratic country, the leaders and the so called self style son of the soil should tried to become real son of the soil by accepting that the concept of one religion, one culture and one language should not be followed in the Nation called India.

During Kargil war, two soldiers from this region, that too from a border village between Myanmar and India in the state of Manipur were martyred while fighting the Pakistani troops. Family of the two did not know the common language that their sons spoke with their fellow soldiers and moreover, the villagers of the two soldiers are fighting tough safeguarding their villages from intruders of the neighbouring villages. Yet they pray for the success of India.

The Indian administrators of the time was not the one which brought victory to the Kargil war, but it was the prayers of those thousand parents, whose sons were fighting for the country, but who never see Delhi, or who never understood the common language (Hindi) that make India success. Indeed, many critics are of the views that India is still in the process of nation building. But the reality is that India is already a nation. A nation of imagine community living under the same roof.

The peaceful co existence and communal harmony was put in dead danger with the rise of communal centric feudalism classes. They spew venom of hate feeling among the various communities for their mere selfish gain. Last few decades showed rise of many such feudalists and the rise of this class raises the feeling of enmity among the various community.

Coming back to the state of Manipur, the problem facing right now has similar roots. The force annexation is often pin point as the root of all sort of trouble here, but the reality is that the root of the entire problem facing in the state of Manipur is the chauvinistic attitude of the ruling government in the mainland India.

Instead of looking on the problem, the then ruler of the mainland India had sideline the real issue submitted by the then expert officials deputed by their government, they never tried anything to put a halt to the rise of the armed opposition group. But rather the then government incited hate feeling among various communities thinking that the same technique adopted the British ruler can suppressed any movement in the region.

Instead of taking into consideration and finding a means to end all sort of violent activism a Scheme called Surrendered Rehabilitation Schemes had been introduced and the result - people now suffered double the problem that they had faced before the coming of the scheme.

Well Mikhail Sergeyevich Gorbachev, the last President of USSR had understood the important of safeguarding each community and USSR was separated into various independent nations. Problem will be there as long as human kind exists. Because they think and act and those act are sometime negative from one's view point even if he or she thought it right from his viewpoints.

The fear factor right now is felt to everyone. Man dies and sacrifices for their children and nation. If the fear factor grows no one can guarantee any untoward incident at which the fear factor was challenge and wipe out completely to restore the once upon a time nation state called Manipur.

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Women Empowerment through judicial Activism in North East India

By- Dr. Sapam Dilipkumar Singh

Philosophical explanation for the origin of world would be incomplete without a universal feminine principle. Different culture and philosophies of the world, including Indian philosophy depicts earth as mother through ages. It signifies the value of women in the process of making of world and human civilization. Empirically speaking, women constitute half of the world population. They have been denied their basic natural rights for centuries because of various reasons such as patriarchal social system, exclusion from politics, and lack of opportunity to education, among others. However, the establishment of the United Nations in 1945 has brought sea change in the process of liberation of women through promotion and protection of their basic human rights. The making of Constitution of India particularly Chapter III of the constitution has immensely been influenced by the jurisprudence of natural school and human rights documents adopted by the UN General Assembly. Chapter III of the constitution guarantees that right to enforce fundamental rights itself fundamental rights. Independence of judiciary and judicial review is intrinsic in Indian constitutionalism. Judiciary is the interpreter, protector and guarantor fundamental rights including women rights in India. Judiciary in India, in many cases, stands up actively and steps in promptly in order to enforce constitutionally guaranteed rights and fill vacuum left by legislature for the promotion and protection of women rights. It liberalises even the rule of *locus standi* so that the court can effectively promote and protect rights of those who could not knock the door of justice.

Judicial Activism

The Constitution of India is not only the fundamental law of the land but also an instrument of social change and revolution. The founding father of the constitution of India envisioned the judiciary as an instrument of social revolution. Social justice is one of the prime goals of the constitution which aims to attain substantial degree of social, economic and political equality among the individuals irrespective of various differences among them. The court provides justice to the disadvantaged groups of people who could not knock the door of justice. According to Black's Law Dictionary judicial activism is the judicial philosophy which motivates judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies which are not always consistent with the restrain expected of appellate judges. It is commonly marked by the decisions calling for social engineering and these decisions occasionally represent intrusions into legislative and executive matters. The constitution entrusts judiciary with the task of keeping all organs of the state within the limits of law and directing the government to enforce fundamental rights effectively. The court not only acts as a mere adjudicator of disputes but it also plays an important role in the system of justicing by laying down principles and guidelines so as to promote and protect human rights of citizens and individuals including rights of the child.

Judicial activism is concerned with new concepts, new rights and remedies. It is also a delicate exercise of court which involves its creativity. Great skill and dexterity are required for such innovation. Judicial creativity is needed to fill the void occasioned by any gap in law or inaction of any other functionary, and thereby to implement the rule of law. Diversion from the traditional course must be made only to the extent necessary to activate the concerned public authorities to discharge their duties under the law and to catalyze the process, but not to usurp their role.¹ In *Bandhua Mukti Morcha vs Union of India*,² justice P.N. Bhagwati pointed out that article 32 (2) of the constitution

requires court to enforce the fundamental rights through appropriate proceedings. The appropriate proceedings mean such proceedings as would meet the end of justice. He further stated how the processual innovations that the court was making were meant to make justice more meaningful.

Public Interest Litigation

Public interest litigation (PIL) is a kind of judicial process innovated by the court. It enables to render justice to poor, illiterate, ignorant and downtrodden masses of the country. Public interest litigation means a legal action initiated in a court for enforcement of public interest. The Supreme Court developed it for the purpose of making basic human rights meaningful for the large masses of people in the country and of making them to realize their social and economic entitlement. The Court observed that public interest litigation is a strategic arm of the legal aid movement which is interested to bring justice within the reach of the poor masses who constitute the low visibility area of humanity.³ In *S.P.Gupta vs Union of India*,⁴ the apex court held that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provisions of the constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provisions. The court further observed that public interest litigation is not in the nature of adversary litigation. It is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our constitution.⁵ Thus, the court has done away with orthodox bar of *locus standi*. The principle of *locus standi* states that only a person who has suffered an injury or whose rights is violated can approach the court and initiate the judicial process. Liberalisation of *locus standi* enables not only the court to reach the poor and disadvantaged section of society but also the individuals or group of people to raise matters of common concerns arising from dishonest or inefficient governance. Anybody can approach the court even by sending a letter, which can be treated by the court as writ petition. In this way, the Supreme Court has also evolved a special jurisdiction known as epistolary jurisdiction. At the beginning of 1980s, the Supreme Court started entertaining letters addressed to it as writ petitions. The Court can even treat the news item published in the newspaper as writ petition. This practice has now been put on a sound jurisprudential foundation.²⁷ The apex court can not only direct the government to appoint fact finding commission but also constitute committee to gather evidence of human rights violations. The High Court has also power to entertain public interest litigation under article 226 of the constitution. Any public spirited individual and non - governmental organizations (NGOs) can use PIL as an effective tool to promote and protect rights and freedoms of the citizens and individuals.

Women rights and judicial activism

The constitution of India guarantees fundamental rights to the individuals and citizens of India. Special provisions for the promotion and protection of women are also contained Chapter III and IV of the constitution. Article 15 of the constitution enables the state to enact welfare and beneficial legislations for women and children. In exercise of the power conferred by this article the Parliament of India

enacted as many as 15 legislations for the welfare of women. Some legislation are the by-product of solemn judgments of supreme court passed in PIL cases filed by public spirited persons and NGOs on behalf of vulnerable, victim of atrocities and marginalized women.

Advancement of science and technology especially medical science could expand the lifespan of human being; however it has been one of the major threats to the life of female foetus in India. The Parliament has enacted the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 to prohibit sex selection before or after conception leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects the dignity and status of women. In Centre for Enquiry into Health and Allied Themes (CEHAT) & Others vs Union of India & Others,⁶ the Supreme Court directed the Central Government to implement with all vigor and zeal the PNDA Act and Rules framed in 1996. It is also directed to all States Governments/ UT Administrations to appoint by notification fully empowered Appropriate Authorities at district and sub- district levels and also Advisory Committees to aid and advise the Appropriate Authority in discharged of its functions. The Apex Court further gave direction to the Central, State and Union Territory Governments to publish information by way of advertisement on media including electronic media. This process should be continued till there is awareness in public that there should not be any discrimination between man and female.

In *Suchita Srivastava & Anr vs Chandigarh Administration*⁷ the Supreme Court observed that there is no doubt that a woman's right to make reproductive choices is a dimension of personal liberty as understood under article 21 of the constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. The Court did not agree with the High Court on the question of exercising *Parens Patriae* concluded that the state must respect the personal autonomy of a mentally retarded woman with regard to decisions about terminating pregnancy. The Court further observed that the language of the Medical Termination of Pregnancy Act, 1971 clearly respects the personally autonomy of mentally retarded persons who are above the age of majority.

In *Vishaka and others vs State of Rajasthan* the Apex Court reaffirmed that sexual harassment in the workplace is a form of discrimination against women. It is further observed that in the absence of enacted law to provide for the effective enforcement of the basic human rights of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplace, court lays down the guidelines and norms specified hereinafter for due observance at all work places or other institutions until a legislation is enacted for the purpose. It would be treated as the law declared by the court under Article 141. The guidelines and norm laid down has been binding law for 16 years. The judgment of the court was so immense that in terms of the landmark judgment, the Parliament of India is compelled to enact the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The higher judiciary has acted proactive role in widening the scope for promotion and protection of women rights by adopting liberal method of

interpretation of the provisions of constitution and welfare legislations for woman.

Woman rights in Manipur

The historical account of the existence and working of the Pacha (women's court), since 33 A.D. till the merger of Manipur into Indian Union in 1949, narrates the unique tradition of dealing with cases involving women. It is generally accepted that women of Manipur enjoy much more basic human rights than the women living in other states of India. However, it does not mean that women of this state are absolutely liberated from all kinds of discrimination and atrocities committed by both state and non state actors. It is observed that number crimes committed against women particularly sexual offences are on raise in the last decade in the state of Manipur which poses threat and causes insecurity to the life of women. Victims of such atrocities have been waiting for justice for a long period of time even after knocking the door of justice. In order to punish and end atrocities against women NGOs and *Meira Paibies* (torch bearer mothers) have staged demonstration and conducted public meetings and rallies on the street. On the other hand, women are not able to get basic entitlements guaranteed by the enacted laws and welfare schemes launched by the government.

In *K. Pradeepkumar vs Union of India* the issue of capping over the free entitlements under the Janani - Sishu Suraksha Karyakram by the government was raised before the High Court of Manipur. The Court set aside the cap which has been put in for limiting the expenses being illegal and arbitrary and directed the government to ensure free entitlements to the pregnant women and also new born, available under Janani Sishu Karyakaram.

In *Human Rights Alert vs the State of Manipur*¹¹ the petitioner sought for direction to ensure enforcement of the provisions of the Protection of Women from Domestic Violence Act, 2005. During the pendency of the petition the Government of Manipur has appointed Protection Officers of existing 9 (nine) districts. The Gauhati High Court, Imphal Bench held that the grievances of the petitioner has been met to a large extent, however, court was inclined to observed that the state Government shall also take necessary steps to appoint Service Providers in near future. It is informed that PIL relating to denial of access to health care and adequate nutrition of women inmates, non offering of vocational trainings in jail and inordinate delay in the trial of sexual offences, are pending in the Manipur High Court.¹² It is found that the Manipur High Court entertains PIL cases pertaining to promotion and protection of woman's rights, however, number of PIL petitions seems to be less.

Conclusion

Objectivity is to some extent shaped by subjectivism. Judicial activism is closely associated with realist jurisprudence which believes in the subjective disposition of the judge in arriving at a conclusion and deciding a case. All judges may not be presumed that they could hear the cry of poor, marginalized, vulnerable section of the society, beyond the boundary of the structured law. However, Judges influenced by natural and sociological jurisprudence stood up and step in and acted promptly when legislature and executive fails to act what they ought to do. The Supreme Court of India, after national emergency, has developed PIL jurisprudence and even guaranteed new genre of rights, widening the scope of fundamental rights including rights of women that really empowered them in many respect. However, number of PIL cases relating to promotion and protection of women rights is very less in the state of Manipur. It is observed that people are more incline to protest against law enforcement agencies than knocking the door of court.